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THE PROBLEM OF REFORMING JUDICIAL ADMINISTRATION IN AMERICA.

II. THE PROBLEM OF REFORMING THE LAW.*

IT HAS been recently explained to us that an effective reformation of judicial administration in America cannot be accomplished solely by simplifying the complex system of American state courts, or by reforming the inadequate system of pleading and procedure by which causes are now tried; but that very material reformation of our American system of law must be accomplished as well.[1] Real students of reform will therefore unite with the ultra conservatives in lamenting that most American reformers have failed to realize this fact; and so, in many instances, have led our legislatures to believe that by merging the jurisdiction of all the judges, and breaking down all the safeguards of procedure, the desired ends of justice will be attained.

The general deficiencies of common-law jurisprudence were noted in our former discussion; and particular reforms in the law it would seem unnecessary to consider, after it has been once admitted that our system of legal rights no longer covers the field of modern requirements. When the task of recasting

*Editorial Note: This is the second article by the author on this subject. The first of the series appeared in VIRGINIA LAW REVIEW for January, 1914.

[1] E. g., by Professor Roscoe Pound, of Harvard, in a paper on "The Causes of Popular Dissatisfaction with the Administration of Justice." Reports of Am. Bar. Assn. for 1906, p. 395.

our body of law is once begun, those charged with the duty will find abundant subjects for their work.

But the far-reaching deficiency recognized and discussed in the preceding article, the fact that the common law has been limited in the main to individual obligations without sufficiently comprehending class duties and obligations, is enough to set reformers to work; and the inherent uncertainty of case-made law, as well as its necessarily voluminous character, has long impelled jurists to find some better method of expansion.

Assuming, then, that the present system of common-law rights ought to be materially extended, the first aim of this article is to decide upon a better way of doing it than through court judgments; and assuming further that the uncertainty of the legal rights now supposed to exist hampers our social advancement, the second aim of this article is to decide whether the corpus juris can be made more certain at the same time that it is being expanded.

The examination of these two matters may be comprehensively stated as the problem of reforming the law; and its solution would seem to be the first step in any thorough plan for reforming judicial administration.

Let us therefore consider separately these two branches of the problem of reforming the law; and first let us consider the problem of extending our common-law system of rights.

In the past, the common law was extended, as we have seen in the previous article, primarily by judicial interpretation. But that has always been an exceedingly slow method, not to speak of its increased uncertainty. So of recent years the system of rights has been extended chiefly by direct legislation. Most of us have never realized, however, that all direct legislation is merely the sudden expansion of our system of the common law, and differs from its expansion by judicial determination merely in degree. We in America, and especially in the eastern and southern portions of America, have always heard our system of law divided into common law and statute law, instead of being divided into law by judicial determination and law by direct legislation; so that we have considered the statute law and the historic common law as essentially different; whereas the only

valid distinction that should be made between one law and another, is independent of its origin, and rests solely upon the certainty of its expression. And all the judicial modifications of the scope of statutes, construing them strictly or broadly, defining the object of their prohibition as *malum prohibitum* or *malum in se,* must be reduced to valid or false foundations when they are traced to the language of the statute itself.

If the statute is clear, and the language is beyond dispute, and the legislating power had the right to make it, it is just as much law as if it had come down to us through the customs and conscience of eight centuries; and should be enforced just as completely.

It being once fully appreciated, then, that every statute passed by our legislatures is merely an addition to our common law, we realize the importance of being sure that the statute is an adequate extension of the system in the direction intended, and is not conflicting with collateral principles of law which we do not desire altered. That is to say, we realize the caution which must be exercised in accurately limiting the field of operation of every new law. We also appreciate, since the power of the legislature to create new rights is unlimited, except by written constitutions, that there is no reason why the legislatures should not undertake to create all the desirable new rights, relieving us as far as possible from depending upon the slow process of extension by judicial decision. The extension by statute can be made definitely and with certainty, and avoids the economic loss as well as the limitations of litigation necessary to judicial expansion.

Of course, there is nothing really new in these reflections. Austin showed in his lectures that the authority of all law is the same.[2] And many of us have thought out the point before we ever read after him. But only by doing so can we reach a full understanding of the powers, duties, and limitations of legislatures, and the true meaning of their actions.

It is true there are many laws passed by every legislature so clearly administrative that their relation to the body of the law is theoretical only, and their drafting and enactment do not

[2] Austin, Jurisprudence, Vol. II, Lecture XXXVII.

require the scientific study suggested by our general conclusions. They are more within the field of legitimate experiment, and can safely be changed from year to year, the public remaining in ignorance of their provisions. But whenever a law so affects the life and dealings of the public that it should be known; and when its provisions enter into private transactions, it should never be drawn but with the utmost caution, and should remain unchanged as long as possible.

The value of scientifically drawn legislation is beginning to be realized in many parts of America; and an appreciation of the necessity for it will become more general as the results of legislation in states attempting it and that in states not attempting it are compared. The day is past when legislators should be expected to prepare, criticize, construe, and adopt the laws which directly affect the corpus juris. Amid the pressure of political policies and questions, always uppermost during the limited sittings of state legislatures, the members may well serve their constituents by devoting their attention to fiscal and governmental matters, and the determination of the broad policies of the state. The creation and limitation of legal rights, and the drafting of all juridical statutes should be left to expert students, and should be submitted to the legislature only for criticism and approval or rejection on broad lines, as the authoritative representatives of the people. The adoption of such a policy means, of course, the creation of a standing legal commission in each state, whose number must be so small as to admit of complete coöperation, and whose personnel may be selected or appointed in a method best suited to remove it from local factional influences. Nor could this be objected to on political grounds, since the broad policies of the work of the commission must always be dictated by the legislative majority.

The states which have adopted this general method are not numerous as yet, and the success of the plan can be demonstrated only after several decades of experience, but unless the influence of the universities in the selection of the personnel of the legislatures increases much more rapidly than that of democracy, such a plan must be adopted to avoid the hopeless chaos in its system of law to which every state is tending. Even in England, where substantive legislation is enacted only after the prolonged

committee work and debate which characterizes our federal legislation, and which makes the English statutes so far superior to those enacted by most of the states, the necessity of corrective reorganizing authority is recognized in the appointed Statute Revision Committee, whose duty it is to harmonize and abbreviate the laws, old and new, and relieve the ellipses and inconsistences incident to all legislative action. And while this is supposed to be accomplished in our several states by the publication from time to time of revisions of the statutes, and so-called codes, yet the periods of their republication are too far apart to accomplish the end desired, and the reforms accomplished by the commissioners to compile our statutes are generally limited to the most apparent errors.

We may conclude then that the systematic creation and expansion of legal rights can be accomplished best through the appointment of special commissioners authorized to prepare laws for the legislatures to enact. And with this assumption we may pass to the second matter to be considered in this article. How can we make the law more certain, as well that law which now exists as that which is to be newly created?

Condemnation of the uncertainty of case-made law is not confined to the litigants of this commercial age. Theorists have harangued against it almost from the beginning of the study of English jurisprudence. Bentham abused it in fragmentary work on government, and Austin whose ever penetrating analysis went to the bottom of every problem of jurisprudence, whether his own conclusions are always acceptable or not, displayed the weakness of our case-made principles, although without suggesting a remedy.[3]

The general conclusion in England is that the good points outweigh the disadvantages of case law;[4] and perhaps that is true in England, where there is but one court of final judicial determination for the whole kingdom. But with us, with forty-eight absolutely distinct courts of final jurisdiction, besides a system of federal courts, a very small part of whose work reaches the Supreme Court of the United States for final determination and review, the state of case-made law at the present time is appalling.

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[3] Austin, Jurisprudence, Lecture XXXVIII.

Undoubtedly the problem must be solved, and it would seem that time cannot bring a solution. For while the increasing volumes of decisions piling up in each state tend to separate American Jurisprudence into forty-eight different systems, our ever increasing interstate commerce is demanding more than ever before the universal recognition of the same legal rights. Our American case-made law produces, therefore, both the evil of uncertainty in the law of each jurisdiction and the evil of unending variation in the laws of the several jurisdictions.

Of recent years two very different measures have been devised to afford relief, although neither of them can be called a scientific plan. One has been the development of an organized effort to obtain uniform legislation throughout the country, resulting in the establishment of a general commission on "Uniform State Laws," which meets in annual convention in connection with the American Bar Association. Its efforts have been limited so far to procuring the enactment of statutes on definite branches of the law, rather than reforming the law as a whole. But while its recommendations in the sphere of commercial law have met with general approval, and considerable gratifying success, convincing evidences of the futility of the plan as one for the solution of the problem of divergence of the law as a whole in the several states is revealed by the record of the commission's action upon the subject of marriage and divorce. The conclusion of the commission [5] was that legal marriage should be made difficult by creating a detailed system of licenses, planned it would seem to prevent designing persons from filching the fortunes of unsuspecting wealthy debauchees in the metropolitan districts; whereas one member of the commission, criticising the inapplicability of the proposed law to American society, recommended the retention of the simple common-law marriage, with the commendable aim of legitimizing the practically unavoidable offspring resulting from otherwise illegitimate social association.[6]

It would seem, therefore, that the law must differ materially

[5] See Report of American Bar Assn. for 1912, pp. 23, 493.

[6] Ibid, p. 492. The member was Frederick G. Bromberg, Esq., of Mobile.

in different localities; and further that the differences cannot be confined to any particular branch; that a law restricting the ranging of cattle and laws recognizing restrictions upon the use of land, are both necessary in Massachusetts, while a law authorizing cattle to run at large and a general policy encouraging land transfers are proper in Montana. And even though entirely uniform commercial laws may be eventually adopted, it must be done at the sacrifice by each locality of some provision which would be earnestly desired. As usury laws are abhorrent to the economic equilibrium of Massachusetts, they seem still necessary in Alabama and Texas.[7]

Uniform legislation then is not the plan by which an expansive country like the United States can solve the problem of judicial administration; and material variation between the laws of the several jurisdictions is probably an unescapable evil.

The other method of avoiding the uncertainty of case law in America should be called rather a circumstantial resultant than a preconceived plan. It has come with the elaborate classification by publishing organizations of the multitudinous judicial decisions in general digests, and the collateral compendia known generally as cyclopædias. Their advent some twenty-five years ago was hailed as a godsend by both practitioners and students; for whose laborious efforts to find precedents in the absence of earlier local declarations, the quite accurate examination of the compilers became a welcome relief. But what then seemed an unqualified boon, has now become a curse to our law.

To promote identification of the holdings among the several states, even the official reporters have adopted an absurd, if not unnecessary, system of headnotes, which renders them frequently longer than the court's opinion itself.[8] And the encyclopædias, instead of serving as an exposition of legal principles, have become concatenated patchworks of the average conclusions

[7] The daily papers in September, 1915, contained the announcement by W. P. G. Harding, of the Federal Reserve Board, that certain rural banks in Ala., Ark. and Texas, were collecting 12 to 60 per cent interest on many of their loans.

[8] "A reporter who understands his business, merely gives the facts and the decision; and leaves his readers to extract the general principles upon which the decision proceeds." Austin, Jur., Vol. II, p. 323. The English Reports have such headnotes.

taken from the collected opinions on a given state of facts of all the judges in the United States.

And to make matters worse, such is the imitative tendency even of specially selected minds, that the judges themselves are rapidly adopting these statements of the cyclopædists of the average of the law, as judicial pronunciamentos of the principles themselves; so that nearly all the kernels of jurisprudence from which our fathers drew principles are being buried deeper and deeper under mountains of chaff.

Surely some more scientific method than that must be devised if common-law jurisprudence is to survive.

What then shall we do? Shall we cry out in our extremity that Lord Bacon was right in his effort to overthrow the historic law and customs of England, and embrace at this late day the jurisprudence of Rome, with its Code and its pandects and its glossaries, where the law was applied from expositions of the promulgated text, unaffected by subsequent adjudicated cases? If a transition to the Roman law were possible today, its wisdom might be conscientiously argued. But of course such a change is now impossible even if its adoption could be secured. The common law is too deeply engrained in the fabric of our life to admit of its being eradicated in many generations. It is true that it was adopted in Germany by what amounted in many provinces to the establishment of a new system of jurisprudence on January 1, 1900.[9] But we need only to consider the present situation in Europe to realize that Germany is not the United States.

Yet discarding the suggestion of the adoption of the civil law, does not preclude us from drawing lessons from the development of the law of Rome in accomplishing some reform. Indeed the fact that we have generally ignored in common-law countries the study of the law of Rome may well be pointed to as demonstrating the unreasoning conceit of the English speaking peoples. Mankind everywhere is the same; and the history of his march toward civilization must everywhere redound to the solution of his problems, constantly recurring in every age. Let us then briefly examine the history of Roman legal develop-

[9] Sohm, Institutes, Introduction, Ch. 1.

ment to see if we can find any method there adopted which can aid us in our need.

When the Roman, or civil law, is referred to, most of us think only of Justinian's Code, because the Code of Justinian and its best known modern adaptation, that adopted by France under the direction of the first Napoleon, are the form in which Roman law came down to us, and the form in which it is generally adopted by those countries whose jurisprudence follows the Roman, or civil law today. But all students know that the Justinian Code, that is to say, the Corpus Juris Civilis of Justinian, represents the late days of Roman law, when the creative instinct of the Roman people as lawmakers was almost gone, and their law was past the age of its vigor.[10] Justinian's Corpus Juris represents the mere crystallization of the historical enactments and legal conclusions of the great Roman jurists; and thereafter the principles of jurisprudence it contained were extended only by the so-called glossators after the lapse of some six hundred years; and their work consisted in examining and comparing the text so as to evolve the principles which in many instances lay concealed in the didactic language of the Digest itself.

The grand period of the Roman law began about the time of the Second Punic war, 218 B. C., when the strict, more or less archaic, law of the Twelve Tables,[11] which applied only to transactions between citizens of the city of Rome itself, was broadened and began to be replaced by what was known as the *jus gentium,* the system of law under which Rome began to trade with other nations, and Roman law became the law of the world. It was developed at the time when Rome burst the bonds

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[10] Of course, no authority need be cited for this; but the article on Roman Law in the 11th Edition of the British Encyclopædia, written by Prof. James Muirhead of Edinburgh and edited by Professor Goudy of Oxford, will be found to give all the detailed information on the development of Roman Law and its decline after the compilation of Justinian's Code. See also Hannis Taylor, Jurisprudence, p. 123.

If more detailed study invites the reader, he may read Professor Rudolph Sohm's Institutes of Roman Law, of which there is an excellent translation by James C. Ledlie, of the Middle Temple.

[11] To call the law of the Twelve Tables archaic is misleading. Mommsen, in his great History of Rome, says that Roman law was far beyond the archaic state at the dawn of authentic history.

of provinciality and her people began their intimate contact with the outside world. Then the restrictive laws of the twelve tables underwent a complete transformation by judicial construction, very much what the Fifth and the Fourteenth Amendments to the United States Constitution have undergone in the last ten to twenty years by the decisions of the federal Supreme Court. Then the annual prætorial proclamations of remedies which the prætor as judge announced that he would regard as law during his prætorship, became recognized as the chief source of new jurisdiction; and as each new prætor adopted his predecessor's declarations, the law became shaped into a body of principles perhaps as full and as flexible as our common law of today.

This system of prætorian law consisted of a series of hypothetical judgments, however, rather than a declaration of abstract principles; and differed from our system of judgments in that they were announced before the case which they were to decide, rather than afterwards, as ours are declared. So that the actual decision of the Roman litigation consisted merely in applying the facts to the law; and the Roman *"judex"* was only a judge on the issue of fact which had to be tried.

It would appear that real adjustment of the facts to the law as laid down in advance, was largely avoided in Rome, as it was under the early common law in England, through a process of elimination effected by the procedure, by which the trial became an issue of fact. But undoubtedly there resulted many instances of misfit, and so there was developed the office of legal advisers to the court. This office was first performed by the pontifices, or priests; but by the end of the second century B. C. there were recognized jurists, who possessed all the learning of the law, and whose answers, or *"responsæ,"* to questions presented to them for answer were accepted as the binding law of the court.[12] By the time of Augustus, the College of Pontifices ceased to perform this function entirely, and authoritative jurists were designated by the emperors exclusively to give this advice. This practice continued until the close of the second century, and the writings and responses of these jurists became the cream of the jurisprudence of Rome. On them rest the

[12] Sohm's Institutes, pp. 88, *et seq.*

foundation of Justinian's Digest, or Pandects, [13] and their office and functions seem to be the controlling feature of that great system of law.

In the reign of the Emperor Hadrian, the annual pronouncement of the prætors was ended by the promulgation under Hadrian's authority of the Perpetual Edict, which consisted of an attempted codification of the preceding essentially transitory edicts into a permanent law.

This compilation has not been preserved for us; but its form, or rather its lack of form, is probably represented by Justinian's Digest; [14] and it was intended to accomplish a comprehensive statement of the law.

It is unnecessary for our present purposes to pursue the details of history further, as it is enough to say that in due time the edict itself ceased to be currently referred to, but the writings and expositions of its principles by four great jurists became effective and eventually the authoritative law of the Empire; and that their writings, abridged and collaborated, became the matter of the Digest of Justinian, and represent for us the body of the law of Rome.

The Corpus Juris of Justinian consists of four main parts; but two of them, the Code and the Digest, represent the value of the whole. The Code, or *Codex,* prepared under the emperor's authority, published first in A. D. 529, and finally in A. D. 534, was intended to include in complete form all the statutory laws in force at that time; and was promulgated by him as such.

The Digest, or Pandects, published in 533, was a digest of the opinions and principles laid down by the jurists prior to Justinian's time, and was adopted and promulgated by him to have the force of statute law.

A year or so later there was completed by his minister, Trebonian, a short introduction, or textbook, apparently intended for the use of students alone, which Justinian prefixed to the *Codex* and Digest, under the name of the Institutes; and which was also given the force of law. And from 535 to 565, the

[13] Sohm, Institutes, p. 100.
[14] Austin, Jurisprudence, Lecture XXXVI.

subsequent statutes of his reign were collected into a fourth unit, called the Novels; and this quadrupartite aggregate is known as the Corpus Juris Civilis, or Justinian's Code, of Rome.

Now, we have generally assumed that this aggregated body was intended as a comprehensive and exclusive statement of the law; just as we understand to be represented by the codes of our day. But Austin calls to our attention [15] that "A code, in the present sense of the term (or a complete body of law established by direct legislation) is nearly or altogether a modern thought." That is to say, Justinian's Corpus Juris, like Hadrian's *Edictum Perpetuum,* like the Twelve Tables of ancient Rome themselves, was expected to be explained and expounded in its application to daily life. And this is the more evident when we examine the text of the parts. Passages of the Institutes epitomize passages of the Digest, and passages of the Code generalize passages of the other two.

So whether the authoritative force of the Corpus Juris survived to the days of the glossators or not, when their period arrived in the eleventh and twelfth centuries there was every reason to welcome their coming. The critical analysis and comparative study which these Bolognese commentators made of Justinian's text caused it to burst into new bloom. "They accomplished what nobody had accomplished before, for it is to their efforts that the modern world owes its intellectual mastery over the vast materials of the corpus juris." [16] And all common-law students must acknowledge that Bracton's synthetic treatise on the Laws of England, upon which almost all English law history is based, derived its form, as well as a large part of its matter, from the work of Azo, his instructor in Bologna, a student at the feet of the great glossators and a recognized glossator himself.

The modern history of the law of Rome, how it came to be adopted as the basis of the law, if not indeed the very body of the law, of all the European continental countries and Scotland, and later of all the South American countries and Mexico, so

[15] Austin, Jur. Vol. II, p. 344, Lecture XXXVI.
[16] Sohm, Institutes, p. 136.

that today it rules nearly all the civilized world except those parts where English is spoken as the dominant tongue, is important to us only as proving its approximate perfection as a system and its adaptability to man's social requirements for all time.

What we wish to note specially with regard to it now, may be summarized in the following propositions:—

1. Down to Hadrian's *Edictum Perpetuum,* and perhaps down to Justinian's Code, the law of Rome consisted of almost as much judicial or judge-made law as the law of England;

2. This judge-made law obtained authority without developing the English device of binding case law, or precedents;

3. It was expanded by the aid of authoritative opinions unrestricted by actual cases;

4. It was eventually crystallized into a comprehensive Code; and

5. This Code was finally interpreted by trained scholars and writers.

For one whose knowledge of Roman law is as limited as the author of this article, it would be presumptuous to undertake to explain definitely how the variations of facts to which the prætorian edicts were applied failed to develop in Rome a system of recorded precedents for the prætor's subsequent rulings, such as arose with the growth of the common law in England. The natural presumption is that it was avoided by the early rise of the plan of appointing jurists to make responses to supposititious questions. By that method an underlying principle might be amplified to any degree; and since these responses were binding upon the judges, the value of the decision of the litigation must have been of secondary importance.

But it is important in this connection to remember that the English system of decided cases as precedents has gained its dominating position in our law from the development of the purely English doctrine that case decisions shall serve not only as precedents, but that as precedents they are binding on recurrent presentations of similar facts for judicial decision. This phase of our law may be easily traced to a by no means remote

origin; and even in recent times, the doctrine has not been accepted beyond doubt. It is true that the Year Books are full of references by both judges and counsel to what had been held in previous litigation; but even down to our own day the reports clearly show that references were made to dicta and customs of great judges, as well as to their actual decisions. Every reader of English Chancery Cases is familiar with the references in the chancellors' opinions to what 'Lord Eldon used to hold,' and to what 'Lord Hardwicke used frequently to say;' and even if it had not been held as recently as 1877 that the Judicial Committee of the Privy Council in England was not bound by previous decisions of that or any other court, [17] it would be impossible to say that the unchallenged law of England was that the principle of a decision is beyond judicial change.

Sir Frederick Pollock, in his "First Book on Jurisprudence," [18] traces the general assertion of the doctrine to a period even subsequent to Lord Coke, and but for Lord Campbell's positive assertion of *stare decisis* as the law in the House of Lords, it might well be doubted if the principle would be asserted in England today.

Still it would be idle to deny that the principle is admitted, both in England and America, as the reason for our system of published judicial reports; and but for the fact that they contain the bulk of our recognized law, the problem of collecting it would not now cause us concern.

Let us then proceed to consider its solution by applying the suggestions we have derived from the law of Rome.

Of course, it is unlikely that the lawyers of America will ever consent to abolish entirely the system of expounding the law through the determinate holding of each actual case, and the preservation of that holding in a published report. It may well be that the courts of the states would preclude such an abolition by construing our constitutions to protect the present system as the "law of the land."

But undoubtedly the extraction of the principles of our past

[17] Ridsdale *v.* Clifton, 2 P. C. 276.
[18] First Edition, p. 299.

decisions and the coördination of them into a systematic corpus juris to be enacted into law, will be gratefully received as a first step to reform. And if satisfactorily accomplished, this compendium should serve to consign to the libraries innumerable tomes which now cumber our shelves, and at least clear the way by laying a new foundation on which coming generations may begin.

The difficulty of such a task in each American jurisdiction is by no means unappreciated; and if the reader desires to consider all its details, let him read Austin's Thirty-Ninth Lecture, where the importance, the elaborateness, the enormity of the task are more thoroughly recited than the present writer will attempt.

Suffice it to say, that the work must be done; and to postpone it for the next generation is but to increase its proportions.

But who shall attempt it? It would seem to be work for the same commission who are to expand the law in lines entirely new, as was proposed in the first pages of this article. And if the labor is huge, it merely requires the creation of a permanent commission, perhaps even with self-perpetuating powers; which should be unobjectionable, since it must always be subject to the review of the legislative, and probably of the executive, branch of the government.

Along with this digesting of case law should proceed, *pari passu,* the codification of the existing statute law as ordered by Justinian. But unlike Justinian's compilations, the statute law and the case law should be blended together, and each amended to produce an harmonious whole, capable of being promulgated as a systematic, as well as a self-contained, corpus juris. It must require as little interpretation and construction as the English language will admit of, but it must be carried out to the same details to which the digested court decisions have gone.

Only by such laborious construction can a code be produced which will reduce litigation; and only for the reduction of litigation is the task worth attempting. For be it ever so complete, and be its text and underlying principles ever so free from conflict, it is inconceivable that the public should construe and

obey all its provisions without professional advice. Only trained minds are capable of comprehending the jurisprudence of civilized society, and the hope of reformers would be attained when the laws are sufficiently definite for trained minds to agree upon their meaning.

But after this digesting and codification shall have been accomplished, and the text has been corrected and amplified to the degree at which conflicting interpretation shall be reduced to the minimum, so that it can be safely adopted and promulgated as positive law, there will still remain the problem of determining its unforeseen uncertainties, as well as the need of expanding and amending it to meet social needs as they arise. The expansion and the amendment of it will remain, of course, a function of the commissioners, under the control of the legislature; and then is the time that the people should decide whether to retain the English system of judicial interpretation, or to abandon our system of case law and adopt the Roman plan of designating authorized jurists with the duty of giving opinions binding upon the courts. If the Roman plan could be adopted, and the commissioners themselves, or others familiar with the progress of their work, could be given authority to construe it, an approximately perfect system of law would be rapidly attained by a periodic ratification or rejection by the legislature of the completed intention of the laws. If on the other hand, our system of case law should be retained, it would become the function of the commission annually to codify the courts' constructions and submit them to the legislature, with or without alteration, as amendments to the law. By this means the same end might be attained, but if the judicial method should be preserved, the law of the decisions would remain subject to the limitations of case decisions until the statutory amendment could be made law.

If such a plan of codification as is here suggested is ever adopted throughout the country at large, a comparatively certain system of law under each state jurisdiction might be accomplished within twenty years at most; and in addition the evils of diversity of laws between the various territorial jurisdictions would be reduced to a minimum; for after all, it is

the indefiniteness of variation between rights and duties under contiguous jurisdictions that incommodes commerce, more than the variation itself. And again, the readiness of a law-creating body to accept the commendable laws of another jurisdiction is enhanced by the thoroughness with which those laws are expressed. The more diligence law makers exert to draw laws to meet social requirements, the more readily do they recognize the good points in the creations of others.

Such seems to be a possible solution of the problem of reforming the law. And while the success of it may seem fanciful indeed, no student can deny that in our condition today, with the laws multiplying in every direction and the courts working without constructive authority or design in applying unstudied remedies to fragmentary principles, any plan, be it ever so fanciful, is worthy of consideration, if its mere statement calls attention to our condition for consideration and review. So no apology is offered for the submission of it; and if it serves merely to start one student to thinking, who knows but that he may find some suggestion in it leading him to contribute something successful in the end?

Problems like thoughts are clarified by passing through many minds; and none of us can hope, in solving great problems, to do more than a part.

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